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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

WILLIAM E. NECESSARY,

Plaintiff,

vs.

MICHAEL J. ASTRUE,

Defendant.

CASE NO. 06cv1805 WQH (BLM)

ORDER

HAYES, Judge:

The matter before the Court is the Report and Recommendation of Magistrate Judge Barbara L. Major, recommending that the Court grant Plaintiff's Motion for Summary Judgment, deny Defendant's Cross Motion for Summary Judgment and remand the case to the Social Security Administration. (Doc. # 16).

Background

On October 28, 2004, Plaintiff William E. Necessary filed an application for Disability Insurance Benefits. (Administrative Record ("AR") 11). On December 28, 2004, the Social Security Administration denied Plaintiff's application. *Id.* On March 11, 2005, the Social Security Administration denied Plaintiff's application again on reconsideration. *Id.* On April 14, 2005, Plaintiff requested a hearing before an Administrative Law Judge ("ALJ"). *Id.*

On December 7, 2005, the ALJ held a hearing on Plaintiff's application. (AR 11). On March 23, 2006, the ALJ issued a written decision denying Plaintiff's application for benefits. (AR 11-16). On July 11, 2006, the Appeals Council upheld the ALJ's ruling. (AR 4-8).

1 On September 7, 2006, Plaintiff commenced the instant action for judicial review and
 2 remedy of the Social Security Administration's final administrative decision pursuant to 42
 3 U.S.C. § 405(g). (Doc. # 1). On January 31, 2008, Magistrate Judge Barbara L. Major issued
 4 the Report and Recommendation, recommending that the Court (1) grant Plaintiff's Motion
 5 for Summary Judgment, (2) deny Defendant's Cross Motion for Summary Judgment, and (3)
 6 remand to the Social Security Administration.

7 Neither party filed objections to the Report and Recommendation.

8 Applicable Law

9 The duties of the district court in connection with a Report and Recommendation of a
 10 Magistrate Judge are set forth in Rule 72(b) of the Federal Rules of Civil Procedure and 28
 11 U.S.C. § 636(b)(1). When the parties object to a Report and Recommendation, "[a] judge of
 12 the [district] court shall make a de novo determination of those portions of the [Report and
 13 Recommendation] to which objection is made." 28 U.S.C. § 636(b)(1); *see Thomas v. Arn*,
 14 474 U.S. 140, 149-50 (1985). When no objections are filed, the district court need not review
 15 the Report and Recommendation de novo. *Wang v. Masaitis*, 416 F.3d 992, 1000 n. 13 (9th
 16 Cir. 2005); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121-22 (9th Cir. 2003) (en banc).
 17 A district court may "accept, reject, or modify, in whole or in part, the findings or
 18 recommendations made by the magistrate judge." Fed. R. Civ. P. 72(b); 28 U.S.C. § 636(b)(1).

19 Ruling of the Court

20 Neither party objected to the Magistrate Judge's Report and Recommendation in this
 21 case, and this Court has reviewed the Report and Recommendation in its entirety. The Court
 22 concludes that the Magistrate Judge correctly determined that the ALJ erred in finding that
 23 Plaintiff may return to his previous work as a crane operator, that Plaintiff has past relevant
 24 work as a milling machine operator and that Plaintiff has transferrable skills to other work.
 25 The Court concludes that the Magistrate Judge correctly determined that remand for further
 26 proceedings is appropriate.

27 IT IS HEREBY ORDERED that the Magistrate Judge's Report and Recommendation
 28 (Doc. # 16) is adopted in its entirety. Plaintiff's Motion for Summary Judgment (Doc. # 11)

1 is **GRANTED**. Defendant's Cross Motion for Summary Judgment (Doc. # 12) is **DENIED**.
2 The Court **REMANDS** to the Social Security Administration for further administrative
3 proceedings consistent with the Report and Recommendation.
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7 DATED: 3/4/08


WILLIAM Q. HAYES
United States District Judge